policeman but not concerned in the investigation, with a view to contacting Morton with the further object of influencing the latter. The second accused was present. At the first two meetings the second and third accused were present. At a third meeting the first accused was present and handed a sum of $200 to Morton. The defence was that the sum of money handed over was not by way of a bribe but was given at the suggestion of the prosecution witnesses as compensation to the mother of the person killed. This defence was rejected by the learned District Judge and he was perfectly entitled to reject it.

The prosecution witnesses were not accomplices. Therefore it seems that, subject to technical matters to be considered later, the offence, if any, was clearly established as against the third appellant. As regards the first appellant, it is a matter of inference. He was the person who had reasons to placate the police and it was he who handed over the money. I think that the learned District Judge was perfectly entitled to draw the inference that he was taking part in the offence. As against the second appellant, the case was also a matter of inference. He was not concerned in the investigation as was the first appellant. He was, however, present on three occasions. On the second occasion the second and third appellants left the coffee shop when negotiations were being conducted and on their return an offer of money was made by the third appellant. In the circumstances it was necessary to infer that the second appellant was either a stranger to the transaction, for whose presence no reasonable explanation could be given, or that he was taking part in the negotiation. His own evidence showed that he was a go-between the first and third appellants.

I shall now deal with the technical matters. I do not think that any complaint as to the wording of the charge in the final form as being of any substance. The substantial matter of law is based on the finding by the learned District Judge that neither of the prosecution witnesses was in a position to show favour in return for a bribe. On this matter there is a difference of opinion among the Indian Courts on the interpretation of section 161. I do not understand the restrictive interpretation put on the section by the Madras and Calcutta Courts. I should have thought that illustration (c) clearly negatived it. The essentials of the offence are, being a public servant, the receipt of a reward and the motive. It is explained that "A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words (a motive or reward for doing)". In view of this I should have thought that the motive of the giver, if known to the recipient, was sufficient. It is true that in many cases a recipient of a bribe might also be convicted of cheating.

I think that it is also clear that the Naval Police are public servants within the meaning of section 21 of the Penal Code.

The sentences are not excessive. The appeals are dismissed.

Appeals Dismissed.

IN THE MATTER OF AN INDENTURE OF MORTGAGE BETWEEN TAN LIAN CHYE AND THE GREAT EASTERN LIFE ASSURANCE CO., LTD.

[Orig. Civil Juris. (Murray-Aynsley C. J.)
October 31, 1949]

[Singapore — Originating Summons No. 162 of 1949]

Direction in Will for conversion to immovable property — No immediate trust for sale — Mortgage of interest under Will — Whether registrable as interest in land under Registration of Deeds Ordinance Section 5.

By his Will Tan Tye, (inter alia) devised and bequeathed to his Trustees all the residue of his real and personal estate upon trust to convert into money such portion as did not consist of land or houses and to invest such money in the purchase of land and houses in Singapore and he directed his Trustees to retain and not to sell or encumber the land or houses, and after declaring certain specific trusts and providing for the payment of an annuity out of a portion of his residuary estate, he provided that the remainder of the income of his residuary estate should be divided into ten equal shares or parts and that two of those shares should be paid periodically to his son Tan Lian Chye, and the remaining shares of the income should be paid periodically to certain persons as therein directed. And the Testator directed that those trusts should continue for a period of 21 years after the decease of the survivor of all his children, grandchildren and nephews living at his death, and at the expiration of that period he directed his Trustees to sell and convert his residuary estate into money and to divide it between his male issue living at that time.

On 29th April, 1948 (Tan Tye having died and his Will having been proved many years previously) the said Tan Lian Chye executed a Mortgage of his two tenth shares in the income of the residuary estate of Tan Tye, in favour of the Great Eastern Life Assurance Company Limited to secure the repayment and interest of a certain sum advanced to the said Tan Lian Chye by the Great Eastern Life Assurance Company Limited.

The Mortgagees having produced the Mortgage to the Registrar of Deeds for registration under the provisions of the Registration of Deeds Ordinance (Cap. 121), the Registrar refused to register such mortgage on the ground that the Mortgage being a mortgage of only a share in a deceased's estate was not an assurance by which land within the Colony was affected and thereby did not come within the ambit of section 5 (1) of the Registration of Deeds Ordinance (Cap. 121).

An Originating Summons was taken out by the Mortgagees under the provisions of section 25 of the

Registration of Deeds Ordinance applying for an order that an entry be made by the Registrar of Deeds in the Register Book or Index of the said Mortgage of 29th April 1948.

Held, that the said mortgage was an assurance by which land in the Colony was affected and was registrable as such under the provisions of Section 5 of the Registration of Deeds Ordinance (Cap. 121).

Cases referred to :—

(1) *Malcolm v. Charlesworth* 1 Keen 63.

(2) *Arden v. Arden* 29 Ch. D. 707.

(3) *Gresham Life Assurance Society v. Crowther* (1915) 1 Ch. D. 224.

(4) *Dearle v. Hall* 3 Russ.1.

(5) *Attorney-General v. Lord Weymouth* 1 Ambler 20.

(6) *Wilmot v. Pike* 5 Hare 14.

ORIGINATING SUMMONS.

J. C. Cobbett for the Mortgagees.

L. Rayner for the Attorney-General.

Murray-Aynsley, C. J. : — This is a point of some practical importance, namely, whether a transaction is registrable under the Registration of Deeds Ordinance (Cap 121). That is to say, it has to be considered whether a transaction is one by which land is affected within the meaning of section 5(1) of that Ordinance.

At the outset I should like to point out that the word "land" must mean title to land. Land in its simplest meaning of part of the earth's surface is not affected by the transactions of conveyancers.

The interest with which we are concerned at the moment arises under a settlement created by the will of one Tan Tye. It is unfortunately necessary to set out part of the will that is material at length :—

> ALL the residue of my real and personal estate I give to my said trustees upon trust as and when they shall think fit to realize and convert into money so much thereof as shall not consist of any estate or interest in land or houses or of cash and to invest such cash and the proceeds of such conversion (after paying thereout my debts, funeral and testamentary expenses and legacies and providing for all monthly payments in the nature of annuities) in their own names upon the purchase of land and houses in the Town of Singapore in the Island of Singapore or upon the security of freehold or leasehold land and houses in the Town of Singapore and upon trust to retain and not to sell or encumber any estate or interest in land or houses but in other respects to deal with the same as if my trustees or trustee were beneficially interested therein. I direct that the trustees or trustee shall be possessed of all my said property and the securities for the same upon the trusts following that is to say:— As to the houses Nos. 327 and 328 Beach Road, Singapore, and the contents thereof of the nature of household furniture and effects upon trust to preserve and keep up the same as a family dwelling house and to permit the same to be used and enjoyed as a furnished dwelling house for the following persons namely my wives, sons, adopted sons and unmarried daughters, and the wives and children and adopted children of my sons and adopted sons until the expiration of the period hereinafter mentioned for the distribution of my estate. As to the rents of the houses Nos. 329, 330 and 336 Beach Road, Singapore, upon trust to apply the net income derived therefrom in or towards the expenses of preserving and keeping up my family dwelling house as hereinbefore provided and for providing for the maintenance of the persons living therein from time to time until the expiration of the period aforesaid. As to the income of all my other property whatsoever and wheresoever whether real or personal, moveable or immoveable, upon trust thereout to remit one hundred dollars ($100) monthly to the head for the time being of my ancestral house at Tiong Poh Seah, in Amoy, for the maintenance and support of my family and the families of my brothers Tan Geok Peck deceased and Tan Hoon deceased. And as to the remainder upon trust to divide the same annually or periodically during every year as my trustees or trustee shall from time to time determine into ten equal shares and to pay one such share equally among the following persons in case they shall survive me or die in my lifetime leaving issue surviving me and so that in the latter case such share shall vest in their respective representatives as part of their estate in the same manner as if they had survived me and died immediately after me, namely my nephews Tan Kim Kew, Tan Chew Kim, Tan Keah Lye, Tan Wan Chye and Tan Teow Kee the sons of my deceased brother Tan Geok Peck, another of such shares equally among the following persons in case they shall survive me or die in my lifetime leaving issue surviving me and so that if in the latter case such share shall vest in their respective representatives as part of their estate in the same manner as if they had survived me and died immediately after me namely my nephews Tan Yew Koh, Tan Yew Ghee and Tan Kye Teng the sons of my deceased brother Tan Hoon, another of such shares to my adopted son Tan Seng Cheong, another of such shares to my adopted son Tan Lian Kwee, two of such shares to my eldest son Tan Lian Swee, two of such shares to my son Tan Cha Boh, and two of such shares to my son Tan Lian Chye. I direct my trustees or trustee to apply my property and the income thereof upon the trusts aforesaid until the expiration of the period of twenty-one years from the decease of the survivor of such of my children and grandchildren and my above named nephews as shall be living at my decease. At the expiration of which period, subject to the trusts aforesaid, I direct my trustees or trustee to divide the whole of my property among all such of my male issue (not including adopted males) as shall then be living in equal shares per capita. And for that purpose I empower my trustees or trustee to sell and convert into money any of my property consisting of estates or interest in land or houses and to distribute the net proceeds of such conversion or to allot any land or houses to any persons or person entitled upon such division as aforesaid in part satisfaction of their or his share.

Tan Lian Chye has mortgaged his interest. The mortgagees, in order to safeguard themselves, wish to register the transaction. The Registrar does not consider that the transaction is one that can be registered. I think that the whole matter turns on whether Tan Lian Chye has an interest in land. If he does then I think it is clear that the transaction is registrable.

Although the practice of registration of deeds has in certain parts of England and the whole of Ireland prevailed for some two hundred and fifty years

there is not much authority on the subject. An early case is that of *Malcolm v. Charlesworth*[1] which decided that the assignment of a legacy charged on land was not within the scope of the Yorkshire Act then in force. Lord Langdale did not give his reasons at length but seemed to base his decision on the practice of the past.

> As to the other point, the only question is whether the land situate in the county of York is to be considered as affected by an assignment of a legacy charged upon the land. It appears to me that the deed under which the plaintiff claims is not a deed which affects the land; it is an assignment of the money charged upon the land, and the money only; and if I were to hold that an instrument assigning money charged upon land situate in a register county required registration, I should lay down a rule which certainly has not hitherto been adopted.

If, as is undoubtedly the case, an instrument creating an equitable charge required registration, it would seem that the assignment of such a charge also required registration. This case is difficult to follow but in *Arden v. Arden*[2], Kay J. (as he then was) said that he did not disagree. In *Gresham Life Assurance Society v. Crowther*[3], Cozens-Hardy, L.J. says "It may be said that that was a bold decision, and I am disposed to think that it is not quite clear that the concurrence of the plaintiff (who represented an assignee) might not have been required to make a title". The case of *Arden v. Arden* dealt with an interest subject to a binding trust for sale. This was considered by the Judge not to be an interest in land. The line of reasoning that seems to have prevailed was based on the consideration that for the purposes of notice under *Dearle v. Hall*[4] interests that would be overridden by a binding trust for sale were treated as personalty, whereas anything else by way of an interest in land was excluded from the rule. This has the effect of making registration under the Middlesex and Yorkshire Acts and notice to trustees mutually exclusive. This is convenient but not logical from the historical point of view. *Dearle v. Hall* is much later than the Yorkshire and Middlesex Acts and so is the conveyancing device of the trust for sale. The same reasoning did not prevail in the case of the Mortmain and Charitable Uses Acts, *Attorney-General v. Lord Weymouth*[5]. The notional conversion brought about by the trust for sale was only intended to benefit the next of kin as opposed to the heir at law. There is no reason why the conversion should have affected the interests of others, e.g. those who had charges on the interests of beneficiaries.

In the *Gresham* case the Court seems to have been influenced by the consideration that the trusts were kept off the title and dealings with these trusts did not affect the purchaser of the estate of the trustees for sale. This presupposes that registration was introduced merely for the benefit of those dealing with the beneficial enjoyment, not with those who had charges and subsidiary interests; this is not at all the case. However, since the *Gresham* case the law, where there is a trust for sale, can be taken to be settled. If the *ratio decidendi* of Kay, J. is correct, then the test is whether the rule in *Dearle v. Hall* applies. If it does not, then it is an interest in land within the meaning of the various Acts. See *Wilmot v. Pike*[6].

In the present case there is no trust for sale and the trusts are on the title. The matter is complicated by the division into shares but I do not think that the duties of the trustees prevent the interest of Tan Lian Chye from being an interest in land. If he had taken everything subject to the charge of $100, I do not think that the matter would have appeared doubtful. The division into ten shares does not make any difference. I do not think that anything less than a trust for sale can bring the matter outside the scope of the Ordinance.

The answer must be that the deed in question can be registered.

Order Accordingly.

LOKE WAN THO v. LACHIE McDONALD AND OTHERS.

[Orig. Civil Juris. (Murray-Aynsley C. J.)
November 16, 1949]

[Singapore — Suit No. 178 of 1949]

Rules of the Supreme Court, Order XI Rule 1 — Service out of jurisdiction — Concurrent writs in England and Singapore — Application to stay proceedings in Singapore.

In this case the Plaintiff claimed damages for an alleged libel contained in an article in the Daily Mail. On 7th September 1948 the Plaintiff caused a writ to be issued in London claiming damages against the 2nd and 3rd defendants, the publishers and the editor of the Daily Mail respectively. Subsequently, the Plaintiff took out a summons to add the 1st defendant as a defendant but no further proceedings have been taken on the London suit. On 18th March 1949 the Plaintiff caused a writ claiming damages for the said libel from the first defendant to be issued in Singapore and this was served on the first defendant. On 24th June 1949 the Plaintiff applied in the Singapore Suit to add the 2nd and 3rd defendants as co-defendants, and further applied for service of the writ out of jurisdiction. An order to that effect was made. The 2nd and 3rd defendants applied by Summons in Chambers for an order to discharge the order authorising service out of jurisdiction on the ground that the discretion given by Order XI rule 1 (f) was wrongly exercised. The defendants also applied by Motion for an order that all further proceedings in the action be stayed.

Held, (1) that the plaintiff in this case is a resident in and belongs to Singapore and as the statements complained of relates to events in Singapore or Malaya, the